

Remarks

Claims 1-20 are pending and were examined in this case. With this Reply, claims 16 and 17 are amended to more particularly point out and distinctly claim the invention.

The applicant notes with appreciation the allowability of claims 2, 5-8, 12, 14 and 15, if rewritten in independent form. Claims 1, 2, 4, 9-11, 13 and 16-20 stand rejected. Those rejections are discussed below.

Rejection under 35 U.S.C. 112, second paragraph

Claim 17 stands rejected for not having sufficient antecedent basis for the phrase "the another treatment". Applicants request withdrawal of this rejection because claim 17 as amended no longer has the objected-to phrase.

Rejections under 35 U.S.C. 102(b)

Claims 1, 2, 4, 9-11, 13, 16 and 18-20 stand rejected under 35 U.S.C. 102(b) as being anticipated by Yang et al, December 2002, Crit. Care Med. 30:2729-2735 ("Yang et al."). Applicant first notes that the undersigned attorney has determined from the publisher that Yang et al. was published on December 26, 2002, which is less than one year before the filing date of the instant application. Therefore, this rejection should be under 35 U.S.C. 102(a). Additionally, Yang et al. is the inventor's own work. This position is supported by the enclosed DECLARATION OF THE INVENTOR UNDER 37 C.F.R. 1.132, establishing that the research results relating to the instant invention that are disclosed in Yang et al. are those of the inventor's. As discussed in *In re Katz*, 687 F.2d 450, 215 USPQ 14 (CCPA 1982) and MPEP 715.01(c), the Declaration should be sufficient to overcome the rejection under 35 U.S.C. 102(a). Accordingly, withdrawal of the rejection is respectfully requested.

Conclusion

In light of the claim amendments and the above discussion, withdrawal of all rejections and passage of the claims to allowance is respectfully requested. If there are any minor matters preventing this result, Examiner Mayer is authorized to contact the undersigned attorney to resolve those matters.

It is believed that the enclosed check for \$180 is all that is required with this Amendment and Reply. If additional fees are required to maintain pendency of this application, the PTO is authorized to withdraw those fees from Deposit Account 01-1785.

Respectfully submitted

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